

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE GOOGLE GENERATIVE AI  
COPYRIGHT LITIGATION

Master File Case No. [23-cv-03440-EKL](#)

**ORDER GRANTING MOTION TO  
DISMISS IN PART**

Re: Dkt. No. 95

In this putative class action, Plaintiffs claim that Defendants Google LLC and Alphabet Inc. “infringed millions of registered copyrighted works” to “build and train [Google’s] generative artificial intelligence models.” Consol. Am. Compl. ¶ 1, ECF No. 91 (“Compl.”). Defendants move to dismiss. Mot. Dismiss, ECF No. 95 (“Mot.”). The Court carefully reviewed the parties’ briefs, sent the parties a tentative ruling, and heard argument on April 23, 2025. For the following reasons, the Court GRANTS the motion in part, without leave to amend.

**I. BACKGROUND**

**A. Factual Allegations**

This action is brought by ten visual artists and authors who claim that Google trained its generative artificial intelligence (“AI”) models on their copyrighted works.<sup>1</sup> Compl. ¶ 1. Plaintiffs seek to represent a class of other copyright owners whose works were used to train Google’s generative AI models. *See id.* ¶¶ 164-165. Defendant Google is a leading technology company that offers a range of products and services, including the Google Search engine, the Chrome internet browser, and the online video platform YouTube. *See id.* ¶ 105. Defendant

<sup>1</sup> Plaintiffs are: Steve Almond, Sarah Andersen, Burl Barer, Jessica Fink, Kirsten Hubbard, Hope Larson, Mike Lemos, Jill Leovy, Connie McLennan, and Jingna Zhang. Compl. at 1.

1 Alphabet is Google’s parent company. *Id.* ¶ 104. Alphabet’s relevance to this case is discussed in  
2 greater detail below. *See infra* Section IV.C.

3 The technology at the center of this case, generative AI, refers to “systems or models  
4 capable of producing output that simulates human expression, often in response to user inputs  
5 called ‘prompts.’” Compl. ¶ 113. There are three types of generative AI models at issue here, and  
6 they are defined according to the types of content they can produce. Large language models  
7 “accept user text prompts as input text and generate responsive text as output.” *Id.* ¶ 116. Text-to-  
8 image diffusion models “use text prompts to create image outputs through a machine-learning  
9 technique called diffusion.” *Id.* ¶ 118. Finally, multimodal large language models “accept input  
10 and generate output in multiple formats.” *Id.* ¶ 119.

11 Generative AI models are developed by using a training dataset – that is, a massive amount  
12 of data that may include “a variety of text, image, audio, and video” depending on the type of  
13 model being trained. *Id.* This training data is sourced from materials like books, websites, news  
14 articles, source code, Wikipedia, internet forum posts, and social media conversations. *Id.* ¶ 123.  
15 Training a generative AI model requires creating multiple copies: “first a copy is made during  
16 data collection, then a series of copies are made during model training, and finally a copy is  
17 permanently incorporated into the parameters” of the generative AI model. *Id.* ¶¶ 120, 174.  
18 Here, Plaintiffs allege that their copyrighted works were included, without authorization, in  
19 various datasets that Google used to train certain of its generative AI models.

20 First, Google developed a series of large language models and multimodal large language  
21 models known as PaLM, GLaM, LaMDA, Bard, and Gemini. *Id.* ¶¶ 122-128, 131 n.34. Google  
22 allegedly trained these models on overlapping datasets, including Google’s Infiniset dataset, which  
23 incorporates the C4 dataset. *Id.* ¶ 123. The C4 dataset includes materials collected from Z-  
24 Library and oceanofpdf.org – digital libraries of pirated books – and Scribd.com, “a subscription-  
25 based digital library with 60 million e-books and audio books.” *Id.* ¶¶ 126-127. According to the  
26 complaint, the Infiniset and C4 datasets include the copyrighted works of Plaintiffs Almond,  
27 Barer, Hubbard, Larson, Leovy, and McLennan. *Id.* ¶ 129; *see also id.* ¶¶ 19-20, 27, 37-38, 45,  
28 56-57, 64, 69-70, 72, 83-84, 86, 91-92, 95.

Second, Google developed a family of text-to-image diffusion models known as Imagen. *Id.* ¶¶ 118, 132. Google allegedly trained the first version of Imagen on the LAION-400M dataset, a dataset of 400 million text-image pairs named after the organization that compiled it: the Large-Scale Artificial Intelligence Open Network. *Id.* ¶¶ 132, 138. Plaintiffs allege that Google “likely” trained later versions of Imagen on the LAION-5B dataset, which includes the LAION-400M dataset and about five billion additional images. *Id.* ¶¶ 144, 146, 148-149. According to the complaint, the LAION-400M and LAION-5B datasets include the copyrighted works of Plaintiffs Zhang, Andersen, Fink, McLellan, and Lemos. *Id.* ¶¶ 143, 150; *see also id.* ¶¶ 31-32, 50-51, 56-57, 60, 64, 77-78, 91-92, 95, 100-101.

Each Plaintiff identifies specific works and traces them to specific datasets that Google allegedly used to train certain generative AI models. For example, Plaintiff Andersen – a cartoonist and illustrator – identifies six of her copyrighted works that were included in the LAION-400M and LAION-5B datasets. *Id.* ¶¶ 30-32. The complaint provides the copyright registration information for each of Andersen’s asserted works, Compl. Ex. A at 8-12, ECF No. 91-1, and alleges that the works are included in the datasets, Compl. Ex. B at 2-7. Each named Plaintiff alleges similar information. Based on these allegations, Plaintiffs allege Google “directly infringed upon Plaintiffs’ exclusive rights through multiple distinct acts of unauthorized reproduction and use” of their works during the model training process. Compl. ¶ 174. Unlike some other generative AI copyright infringement cases, Plaintiffs do not allege that the models produce infringing output. *Cf. Concord Music Grp., Inc. v. Anthropic PBC*, 772 F. Supp. 3d 1131, 1134-36 (N.D. Cal. 2025).

## **B. Procedural History**

This consolidated action originated as two separate putative class actions: *Leovy v. Google LLC*, No. 23-cv-03440, and *Zhang v. Google LLC*, No. 24-cv-02531. The *Leovy* action was filed on July 11, 2023, and asserted copyright infringement and many other claims against Google, Alphabet, and DeepMind. ECF No. 1. The claims against Alphabet and DeepMind were voluntarily dismissed without prejudice early in the case. Notice of Voluntary Dismissal, ECF No. 13. Thereafter, Google moved to dismiss the complaint, but rather than opposing, the *Leovy*

1 Plaintiffs amended the complaint as a matter of course pursuant to Federal Rule of Civil Procedure  
 2 15(a)(1). Notice, ECF No. 15; *see also* First Am. Compl., ECF No. 28. Google then moved to  
 3 dismiss the first amended complaint, ECF No. 33, and Judge Martínez-Olguín granted the motion  
 4 because the complaint failed to comply with Rule 8, *see* Order, ECF No. 46. On June 27, 2024,  
 5 the second amended complaint was filed. ECF No. 47. Google moved to dismiss again, ECF  
 6 No. 55, and that motion was pending when the *Leovy* case was reassigned to this Court on August  
 7 21, 2024.

8 The *Zhang* action was filed on April 26, 2024, on behalf of visual artists – including  
 9 photographers, cartoonists, and illustrators. *Zhang* Compl. ¶¶ 11-14, No. 24-cv-02531, ECF  
 10 No. 1. The *Zhang* Plaintiffs asserted a claim for direct copyright infringement against Google, and  
 11 a claim for vicarious copyright infringement against Alphabet. On June 20, 2024, Google moved  
 12 to dismiss the complaint. Mot. to Dismiss, *Zhang*, No. 24-cv-02531, ECF No. 24. This motion  
 13 was also pending when the *Zhang* case was reassigned to this Court on August 21, 2024.

14 After the *Leovy* and *Zhang* cases were reassigned to this Court, the Court granted the  
 15 parties’ stipulation to consolidate the cases for all trial and pretrial proceedings. Joint Stip. &  
 16 Order Consolidating Cases, ECF No. 73. The parties presented competing proposals with respect  
 17 to the pending motions to dismiss. Defendants asked the Court to decide the pending motions.  
 18 Defs.’ Status Report, ECF No. 75. Plaintiffs asked the Court to deny the motions as moot, and to  
 19 grant leave to file a consolidated amended complaint. Pls.’ Status Report at 2, ECF No. 76. Over  
 20 Defendants’ objections, the Court terminated the motions to dismiss and granted Plaintiffs leave to  
 21 file a consolidated amended complaint. However, the Court ordered the parties to first meet and  
 22 confer regarding Plaintiffs’ anticipated amendments. *See* Order Re: Consolidation Plan at 2, ECF  
 23 No. 77 (“Plaintiffs shall disclose all new parties, new claims, and new allegations not included in  
 24 either the *Leovy* second amended complaint or the *Zhang* complaint.”). The purpose of the meet-  
 25 and-confer process was to streamline further motion practice on the pleadings, and to account for  
 26 issues that Google raised in its motions to dismiss prior to consolidation. *See id.* (“In finalizing  
 27 the consolidated amended complaint, Plaintiffs shall make substantial good-faith efforts to address  
 28 the issues Google raised at the conference and in prior motions to dismiss.”).

On December 20, 2024, Plaintiffs filed the consolidated amended complaint. The operative complaint asserts two causes of action: direct copyright infringement against Google, Compl. ¶¶ 171-181, and vicarious copyright infringement against Alphabet, *id.* ¶¶ 182-195. Defendants move to dismiss on various grounds discussed below. Defendants also filed a motion to strike class allegations, which the Court addressed in a separate order. *See* Order Granting Mot. to Strike Class Allegations, ECF No. 128.

## II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a court must dismiss a complaint if it fails to state a claim upon which relief can be granted. To avoid dismissal, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when the pleaded facts allow the court “to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When there are “two possible explanations, only one of which can be true and only one of which results in liability, plaintiffs cannot offer allegations that are ‘merely consistent with’ [its] favored explanation but are also consistent with the alternative explanation.” *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1108 (9th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 678). “Something more is needed, such as facts tending to exclude the possibility that the alternative explanation is true, in order to render plaintiffs’ allegations plausible within the meaning of *Iqbal* and *Twombly*.” *Id.* (citing *Twombly*, 550 U.S. at 554).

For purposes of a Rule 12(b)(6) motion, the court generally “accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). However, the court need not “assume the truth of legal conclusions merely because they are cast in the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per curiam) (quoting *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)).

### III. REQUEST FOR JUDICIAL NOTICE

In ruling on a Rule 12(b)(6) motion, courts generally do not consider material outside the pleadings. *United States v. Corinthian Colls.*, 655 F.3d 984, 998 (9th Cir. 2011). However, courts may consider “documents incorporated in the complaint by reference[.]” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). Incorporation by reference “treats certain documents as though they are part of the complaint itself. The doctrine prevents plaintiffs from selecting only portions of documents that support their claims, while omitting portions of those very documents that weaken – or doom – their claims.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018). “[A] defendant may seek to incorporate a document into the complaint ‘if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s claim.’” *Id.* (quoting *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003)).

Courts may also consider facts that are “not subject to reasonable dispute” because they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). But even under those circumstances, courts may not take judicial notice of materials for the purpose of creating a defense against the well-pleaded allegations in the complaint. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018).

Google asks the Court to consider seven exhibits in connection with its motion to dismiss. *See* Req. for Judicial Notice, ECF No. 96. Google’s request is GRANTED as to Exhibits 1 through 3, GRANTED in part as to Exhibit 7, and DENIED as to Exhibits 4 through 6.

Plaintiffs do not dispute that Exhibits 1 through 3 are incorporated by reference in the complaint. These exhibits are copyright registrations for the works asserted by Plaintiff Andersen. Because a valid copyright registration is required for Andersen’s copyright infringement claims, the complaint necessarily relies on these registrations. *See infra* Section IV.A.1. Additionally, Plaintiffs quote extensively from the registrations. *See* Compl. Ex. A at 8-12. Accordingly, the Court will consider Exhibits 1 through 3.

Exhibit 7 is an Alphabet 10-K form filed with the Securities and Exchange Commission. The Court may take judicial notice of this SEC filing because it is a publicly available document

1 whose accuracy cannot reasonably be questioned. *In re Bare Escentuals, Inc. Sec. Litig.*, 745  
 2 F. Supp. 2d 1052, 1066-67 (N.D. Cal. 2010) (“The court is . . . permitted to take judicial notice of  
 3 the content of relevant public disclosure documents required to be filed with the SEC.”).  
 4 However, the Court considers SEC filings “only for the purpose of determining what statements  
 5 the documents contain, not to prove the truth of the documents’ contents.” *Troy Grp., Inc. v.*  
 6 *Tilson*, 364 F. Supp. 2d 1149, 1152 (C.D. Cal. 2005). The Court will not consider Exhibit 7 for  
 7 the purpose of disputing Plaintiffs’ allegations regarding Alphabet’s purported control of Google.

8 Exhibits 4 through 6 purport to be posts by Plaintiff Andersen on the social media platform  
 9 X (formerly Twitter). The Court may not take judicial notice of these posts because their accuracy  
 10 can “reasonably be questioned,” Fed. R. Evid. 201(b), and Plaintiffs dispute their authenticity,  
 11 Opp. at 10, ECF No. 103. Additionally, Google asks the Court to consider these posts for an  
 12 improper purpose. Specifically, Google argues that these exhibits show that Andersen published  
 13 three of her asserted works on X before she registered them, meaning that her copyright  
 14 registrations are invalid. The Court may not consider these materials to create a defense to the  
 15 well-pleaded allegations in the complaint. *Khoja*, 899 F.3d at 1002.

#### 16 **IV. DISCUSSION**

17 Defendants move to dismiss Plaintiffs’ direct infringement claims on three grounds. First,  
 18 Defendants argue that Plaintiff Andersen fails to plausibly allege that each of her asserted works is  
 19 covered by a valid copyright registration. Second, Defendants argue that Plaintiffs improperly  
 20 assert infringement of other unspecified works. Third, Defendants argue that Plaintiffs fail to  
 21 plausibly allege infringement as to certain generative AI models and products. Defendants also  
 22 move to dismiss Plaintiffs’ claims for injunctive relief and Plaintiffs’ vicarious copyright  
 23 infringement claims against Alphabet. The Court discusses these issues in turn.

#### 24 **A. Direct Copyright Infringement**

##### 25 **1. Plaintiff Andersen’s Works**

26 Google’s motion to dismiss challenges the direct infringement claims of just one named  
 27 Plaintiff, Sarah Andersen. Andersen asserts that six of her copyrighted works were used to train  
 28 certain Google generative AI models. Compl. ¶¶ 30-34. Google argues that Andersen fails to



1 plausibly allege that any of the asserted works is covered by a valid copyright registration.

2 “A threshold requirement of bringing a copyright suit is . . . that a plaintiff has registered  
3 the works at issue with the U.S. Copyright Office.” *Logan v. Meta Platforms, Inc.*, 636 F. Supp.  
4 3d 1052, 1059 (N.D. Cal. 2022) (citing 17 U.S.C. § 411(a)). A copyright registration “is prima  
5 facie evidence of the validity of the copyright.” *Alaska Stock, LLC v. Houghton Mifflin Harcourt*  
6 *Publ’g Co.*, 747 F.3d 673, 683 (9th Cir. 2014). Once the fact of copyright registration is alleged,  
7 courts typically do not resolve the scope of a copyright registration’s coverage at the pleading  
8 stage. *See, e.g., AJ Mgmt. Consulting, LLC v. MBC FZ-LLC*, No. 13-cv-03213-BLF, 2014 WL  
9 2878891, at \*4 (N.D. Cal. June 24, 2014) (“[D]eciding the validity of Plaintiff’s copyright  
10 registration would require the Court to make factual determinations . . . that are not appropriate on  
11 a Rule 12(b)(6) motion to dismiss.”).

12 Here, Andersen plausibly alleges that each of her asserted works is covered by a valid  
13 registration, and she provides the copyright registration information for each asserted work.  
14 Compl. Ex. A at 8-12. This is sufficient at the pleading stage. *See Alaska Stock*, 747 F.3d at 684.  
15 In arguing that these allegations are insufficient, Google asks the Court to make inferences against  
16 well-pleaded allegations in the complaint and premature factual determinations based on material  
17 that is not subject to judicial notice.

18 Here, all of Andersen’s copyright registrations are for compilations – that is, collections of  
19 preexisting materials. Mot. at 7. A compilation registration covers material contributed by the  
20 author that was not previously published. *Compendium of U.S. Copyright Office Practices*  
21 § 618.6 (3d ed. Jan. 28, 2021) (“Compendium”). Google argues that three of the registrations  
22 expressly state that the compilations include previously published materials that are excluded from  
23 coverage. Mot. at 8. But the registrations do not state that the works asserted *in this case* are  
24 among the previously published materials excluded from the copyright registration. The Court has  
25 no basis to infer that, because *some* materials in the compilation were previously published, the  
26 works asserted here were previously published. *See Manzarek*, 519 F.3d at 1031 (construing  
27 allegations in light most favorable to the plaintiff).  
28



Google also claims that Andersen previously published some of the asserted works on the social media platform X, and therefore these works are not covered by the compilation registrations either. Mot. at 9-10. This argument would require the Court to take judicial notice of posts on X and X's terms of use to determine whether Andersen authorized other X users to make copies of her works. *See* Compendium § 1008.3(C) (explaining that publication requires "the copyright owner [to] expressly or impliedly authorize users to make retainable copies," and observing that "it is not always factually clear whether the placement of works online is intended to be an authorized distribution"). This inquiry is too fact-bound at this stage. As discussed above, it is improper to take judicial notice of posts on X, especially for purposes of creating a defense to the well-pleaded allegations of copyright registration in the complaint. Google relies on *Brunson v. Cook*, but that case observed in dicta – at the *summary judgment* stage – that the plaintiff's work "was published when it was made available on YouTube, Instagram, and Twitter, where it could be viewed and shared by the public." No. 20-cv-011056, 2023 WL 2668498, at \*8, \*13-14 (M.D. Tenn. Mar. 28, 2023). The details of Andersen's posts, and whether the posts constitute publication, may be revisited on a more complete record. Accordingly, the Court declines to dismiss Plaintiff Andersen's direct infringement claims.

## 2. Alleged Infringement of Unspecified Other Works

Next, Defendants argue that Plaintiffs improperly assert infringement of "other works" not expressly identified in the complaint. Defendants acknowledge that each named Plaintiff identifies specific works and traces these works to training datasets that Google allegedly used to train specific generative AI models. Mot. at 12; Compl. ¶¶ 17-113. However, Defendants take issue with Plaintiff's allegations that Google infringed "at least" these specified works, which implies that Plaintiffs may assert other works too. *See, e.g.*, Compl. ¶¶ 18, 31, 49, 68, 76, 90, 99.

At the pleading stage, particularly when the scope of the alleged infringement is wide-ranging and not precisely known, it is permissible to plead infringement of representative works. *Becton, Dickinson & Co. v. Cytek Biosci. Inc.*, No. 18-cv-00933-MMC, 2020 WL 1877707, at \*6 (N.D. Cal. Apr. 15, 2020); *see also Thunder Studios, Inc. v. Kazal*, No. 17-cv-00871-AB (SSx), 2018 WL 5099726, \*3 (C.D. Cal. Mar. 22, 2018) (holding that allegations gave "fair notice of the

works at issue” even though the list of works “might not be exhaustive”); *Joint Stock Co. Channel One Russ. Worldwide v. Infomir LLC*, No. 16-cv-1318 (GBD) (BCM), 2017 WL 696126, at \*14 (S.D.N.Y. Feb. 15, 2017) (holding that representative works are sufficient where claims are “based on the alleged wholesale infringement of a large number of copyrighted works”), *R. & R. adopted*, 2017 WL 2988249 (S.D.N.Y. Mar. 26, 2017). Here, Plaintiffs trace specific copyrighted works to specific training datasets.<sup>2</sup> These allegations put Google on notice of Plaintiffs’ claims.

Accordingly, the Court will not dismiss Plaintiffs’ claims as to other unspecified works.

### 3. Insufficient Allegations as to Certain Models and Products

Defendants argue that Plaintiffs fail to plausibly allege copyright infringement with respect to many of the generative AI models and Google products referenced in the complaint. As to the scope of the models and products at issue, Plaintiffs allege the following:

The Generative AI Models include all versions, iterations, and relatives of Bard, Gemini, Imagen, PaLM, GLaM, LaMDA, Codey, Chirp, Veo, MedLM, LearnLM, SecLM, Gemma, CodeGemma, RecurrentGemma, PaliGemma. The AI-Powered Products include all versions and iterations of Google Search, Google Cloud, Gmail, Google Docs, Google Ads, Google Slides, Chrome, YouTube, Google Photos, Google Sheets, Google Meet, Google Pixel, Google Maps, Google AI Studio, Google Vids, Google Workspace, and Vertex AI.

Compl. ¶ 105. In Google’s view, Plaintiffs’ allegations “that a particular training dataset contains Plaintiffs’ works cannot open the door to discovery into any and all of Google’s generative AI models or products, where Plaintiffs have failed to make any allegations connecting those models or products to Plaintiffs’ works.” Mot. at 23.

The Court concludes that Plaintiffs plausibly allege copyright infringement as to the following models: PaLM, GLaM, LaMDA, Bard, Gemini, and Imagen. Plaintiffs have identified

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<sup>2</sup> Google relies on inapposite cases where the plaintiff failed to allege infringement of a single specific work. See Mot. at 11-12. Those cases are different because the plaintiffs did not provide defendants any notice of the specific copyrights asserted. *DBW Partners, LLC v. Bloomberg, L.P.*, No. 19-311 (RBW), 2019 WL 5892489, at \*3 (D.D.C. Nov. 12, 2019) (rejecting conclusory allegation that defendant infringed plaintiff’s unspecified copyrighted work); *Livingston v. Morgan*, No. C-06-2389-MMC, 2006 WL 8459602, at \*3 (N.D. Cal. July 31, 2006) (rejecting allegation that defendant infringed “at least one” of plaintiff’s copyrights, without specifying a particular work). Here, by contrast, every named Plaintiff meets the threshold requirement of plausibly alleging at least one instance of infringement as to specific copyrighted works.

specific copyrighted works that were allegedly included in datasets used to train these models. Compl. ¶¶ 19-20, 27, 31-32, 37-38, 45, 50-51, 56-57, 60, 64, 69-70, 72, 77-78, 83-84, 86, 91-92, 95, 122-128, 131 n.34, 132, 138, 144, 146, 148-150. However, the Court concludes that Plaintiffs fail to plausibly allege copyright infringement as to the other AI models referenced in the complaint: Codey, Chirp, Veo, MedLM, LearnLM, SecLM, Gemma, CodeGemma, RecurrentGemma, and PaliGemma. Plaintiffs do not allege any facts regarding these models at all. These models are referenced only one time in the complaint, in a long list of what appears to be every generative AI model that Google has ever developed. Because Plaintiffs do not allege that any of their works were included in training datasets used to develop these models, Plaintiffs do not plausibly allege copyright infringement. *See Iqbal*, 556 U.S. at 678-79. Accordingly, the Court dismisses Plaintiffs’ claims with respect to these models.<sup>3</sup>

#### **B. Claim for Injunctive Relief**

Google argues that Plaintiffs fail to plausibly allege two requirements for injunctive relief: irreparable harm and the inadequacy of legal remedies. Mot. at 13-15. The Court disagrees.

Here, Plaintiffs allege that “Google’s mass appropriation of literary works has depressed the overall market” for fiction and nonfiction writers, illustrators, and cartoonists, thereby “causing substantial harm to the commercial value of [Plaintiffs’] portfolio of works.” Compl. ¶¶ 29, 34, 47, 53, 66, 74, 80, 88, 97, 103; *see also id.* ¶ 157 (alleging that Google’s copying “diminished the value of [Plaintiff’s] copyrights”). Plaintiffs claim that Google’s infringement creates “distinct categories of harm that resist traditional monetary remediation” and “monetary damages cannot prevent the threat of future infringement.” Compl. ¶ 181. Plaintiffs also allege

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<sup>3</sup> By contrast, Plaintiffs’ allegations regarding Google products do not create the same problematic ambiguity as to the scope of Plaintiffs’ claims. Here, the copyright infringement allegedly occurs when training the generative AI models. Plaintiffs do not allege that Google’s *products* infringe their copyrights – for example, by reproducing the works in response to user prompts. Likewise, the proposed class is defined in terms of the models at issue, not in terms of Google products. *See* Opp. to Mot. to Strike Class Allegations at 3, ECF No. 105 (defining the proposed class in terms of persons “who owned a United States copyright in any work used by Google to train Google’s Generative AI Models”). The Court also declines to strike these allegations because they are not necessarily impertinent. *See* Fed. R. Civ. P. 12(f). Google’s alleged use of its generative AI models in certain products may be relevant to the commercial nature of Google’s use, which may inform the fair use analysis at a later stage of the case.

1 that they “have no adequate remedy at law.” Compl. ¶ 195. These allegations are sufficient at this  
 2 stage. *See Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 865-66 (9th Cir. 2017) (finding  
 3 evidence of irreparable harm where infringement “undermine[d] the value” of copyrighted works).  
 4 “[T]he propriety of injunctive relief in cases arising under the Copyright Act must be evaluated on  
 5 a case-by-case basis[.]” *Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 980-81 (9th Cir. 2011).  
 6 Because Plaintiffs plausibly allege the risk of future copyright infringement, and because the  
 7 alleged market harms and diminution in value may be difficult to quantify, it would be premature  
 8 to preclude Plaintiffs from seeking injunctive relief.

9 Google relies on inapposite cases to support early dismissal. In *Sonner v. Premier*  
 10 *Nutrition Corp.*, the operative complaint did not allege that the plaintiff lacked an adequate legal  
 11 remedy at all – and, “[m]ore importantly,” the plaintiff conceded that she sought “the same sum in  
 12 equitable restitution . . . as she requested in damages to compensate her for the same past harm.”  
 13 971 F.3d 834, 844 (9th Cir. 2020). Here, there is no indication that Plaintiffs’ requested injunctive  
 14 relief is identical to their damages claim. Likewise, in *Philips v. Ford Motor Co.*, the Ninth  
 15 Circuit held only that the plaintiffs “were required to plead the inadequacy of their legal remedies  
 16 to state a claim for injunctive relief.” 726 F. App’x 608, 609 (9th Cir. 2018); *see also Guthrie v.*  
 17 *Transamerica Life Ins. Co.*, 561 F. Supp. 3d 869, 875 (N.D. Cal. 2021) (collecting cases). But that  
 18 is precisely what Plaintiffs have done here. Because Plaintiffs plausibly allege potential  
 19 entitlement to injunctive relief, the Court declines to dismiss on this basis.

### 20 C. Vicarious Copyright Infringement

21 Plaintiffs claim that Alphabet is vicariously liable for Google’s alleged direct copyright  
 22 infringement. Generally, to state a claim for vicarious copyright infringement, “a plaintiff must  
 23 allege that the defendant has (1) the right and ability to supervise the infringing conduct and (2) a  
 24 direct financial interest in the infringing activity.” *Perfect 10 v. Visa Int’l Serv. Ass’n*, 494 F.3d  
 25 788, 802 (9th Cir. 2007) (citing *Ellison v. Robertson*, 357 F.3d 1072, 1078 (9th Cir. 2004)). The  
 26 first element requires that the defendant “has both a legal right to stop or limit the directly  
 27 infringing conduct, as well as the practical ability to do so.” *Perfect 10, Inc. v. Amazon.com, Inc.*,  
 28 508 F.3d 1146, 1173 (9th Cir. 2007).

In this section, the Court initially holds that Plaintiffs fail to plausibly allege the first element of vicarious liability – that Alphabet had the practical ability to limit Google’s direct infringement. Next, the Court addresses Plaintiffs’ argument that Alphabet is vicariously liable because it had “control authority” over the infringing conduct as Google’s parent company. *See* Opp. at 15-17. The Court concludes that vicarious copyright infringement claims are subject to the bedrock principle of corporate law that a parent company is not liable for a subsidiary’s acts based solely on the parent-subsidary relationship. Here, Plaintiffs allege nothing more than a typical parent-subsidary relationship, thus Plaintiffs’ vicarious copyright infringement claims fail for this additional reason. Because Plaintiffs’ failure to allege the first element is dispositive, the Court does not reach the second element – Alphabet’s direct financial interest in infringement.

### 1. Legal Right and Practical Ability to Control Direct Infringement

The standard for vicarious copyright infringement emerged from cases where the defendant exerted control over the physical space where direct infringement occurred. *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 261-62 (9th Cir. 1996). For example, in *Fonovisa*, the plaintiff sued “the operators of a swap meet . . . where third-party vendors routinely [sold] counterfeit recordings that infringe on the plaintiff’s copyrights.” *Id.* at 260. The Ninth Circuit held that the swap meet operator could be held vicariously liable because it wielded sufficient control over the direct infringers by renting out booth space and retaining the right “to exclude any vendor for any reason, at any time.” *Id.* at 261, 263. Additionally, the operator patrolled the premises of the swap meet, and even shared information about the vendors with local law enforcement, which conducted a raid and “seized more than 38,000 counterfeit recordings.” *Id.* at 261-62. Thus, in *Fonovisa*, vicarious liability was established by the defendant’s control over the physical space where the infringement occurred, and its practical ability to police that space. *Id.*

In more recent cases, the Ninth Circuit has applied this standard – the right to control the space and the ability to police and stop conduct in that space – to operators of online platforms, services, and websites. These cases are conceptually similar to *Fonovisa*, but they raised new questions regarding a defendant’s legal right and practical ability to control direct infringement in digital environments. The defendant’s vicarious liability often turned on the technological

1 feasibility of detecting and stopping direct infringement by third-party users of the operator’s  
2 platform or service.

3 For example, in *Napster*, the plaintiffs sued the operator of a peer-to-peer file sharing  
4 service for facilitating “the transmission of MP3 files between and among its users.” *A&M*  
5 *Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001). The Ninth Circuit held that  
6 “Napster had the right and ability to police its system and failed to exercise that right to prevent  
7 the exchange of copyrighted material.” *Id.* at 1023-24. Specifically, Napster had “both the ability  
8 to use its search function to identify infringing musical recordings and the right to bar participation  
9 of users who engage in the transmission of infringing files.” *Id.* at 1027. However, the Ninth  
10 Circuit recognized that Napster’s practical ability to control direct infringement was limited by  
11 “the limits of [its] system.” *Id.* That is, Napster’s ability to search for infringing works was  
12 limited by the fact that users named the MP3 files and Napster could not access the files to  
13 determine their true content. *Id.* at 1012, 1027. Accordingly, the Ninth Circuit instructed the  
14 district court to modify its preliminary injunction to account for Napster’s limited ability to detect  
15 infringement. *Id.* at 1027.

16 The Ninth Circuit has applied similar reasoning in other digital copyright infringement  
17 cases. For example, in *Perfect 10, Inc. v. Amazon.com, Inc.*, third-party websites published  
18 plaintiff’s copyrighted images, and Google indexed and stored those images in a database that  
19 powered its search engine. 508 F.3d at 1155-57. The Ninth Circuit held that Google did not have  
20 a legal right “to stop direct infringement by third-party websites,” and without image-recognition  
21 technology, Google also lacked “the practical ability to police the infringing activities.” *Id.* at  
22 1173-74. Similarly, in *VHT, Inc. v. Zillow Group, Inc.*, the plaintiff asserted a vicarious  
23 infringement claim against Zillow, an online real estate marketplace, based on “photos that users  
24 saved or uploaded” to one of Zillow’s websites. 918 F.3d 723, 730-31, 746 (9th Cir. 2019). The  
25 vicarious infringement claim failed because the plaintiff produced insufficient evidence that  
26 “Zillow had the technical ability to screen out or identify” plaintiff’s infringed works. *Id.* at 746.  
27 “Once [plaintiff’s] photos were uploaded . . . ferreting out claimed infringement . . . was beyond  
28 hunting for a needle in a haystack.” *Id.*



Applying these principles here, Plaintiffs do not plausibly allege that Alphabet had the practical ability to stop or limit Google’s alleged direct infringement. Here, the direct infringement is Google’s use of training datasets that allegedly included copyrighted works. But Plaintiffs do not allege *any* facts regarding Alphabet’s involvement in the training process.<sup>4</sup> For example, Plaintiffs do not allege that Alphabet instructed Google how to select a training dataset or which training datasets to use. Plaintiffs also do not allege that Alphabet oversaw any part of the training process or required Google to obtain its approval during the training process.

Plaintiffs offer the conclusory allegation that Alphabet had the “authority to implement copyright compliance measures.” Compl. ¶¶ 184, 188. But, at most, this allegation about “authority” speaks to Alphabet’s alleged right to control Google generally.<sup>5</sup> Plaintiffs fail to address the separate requirement that Alphabet had the *practical ability* to stop or limit infringement during the model training process. *See Amazon.com*, 508 F.3d at 1173-74. Plaintiffs do not allege any “copyright compliance measures” that Alphabet could have implemented, or how they would function. *Luvdarts, LLC v. AT & T Mobility, LLC*, 710 F.3d 1068, 1072 (9th Cir. 2013) (affirming dismissal where plaintiff “failed to allege facts that plausibly show that the [defendants] could implement an effective system” to police infringement). Plaintiffs do not allege any facts regarding Alphabet’s technological ability to search for or recognize Plaintiffs’ works during Google’s selection or use of these massive training datasets that were compiled by *third parties*.<sup>6</sup> *See Amazon.com*, 508 F.3d at 1173-74 (defendant lacked image-recognition technology to identify infringing works); *Zillow*, 918 F.3d at 746 (defendant lacked “the technical

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<sup>4</sup> The Court does not suggest that direct participation is required for vicarious infringement. Rather, the lack of allegations regarding Alphabet’s involvement in the training process further undermines Plaintiffs’ assertion that Alphabet had the practical ability to control Google’s alleged infringement.

<sup>5</sup> Plaintiffs also conflate the control that any parent company may exercise over its subsidiary with the right and practical ability to supervise infringing conduct. None of the Ninth Circuit cases discussed above addressed or endorsed this expansive view of vicarious liability. As discussed in the next section, Plaintiffs’ theory risks creating unprecedented automatic vicarious liability whenever a parent company fails to stop a subsidiary’s independent wrongful acts.

<sup>6</sup> The C4 dataset (which is included in the Infiniset dataset) is a “filtered version of the Common Crawl dataset,” which is a “freely available collection of web crawl data” created by a third party. Compl. ¶¶ 123-124. Likewise, the LAION datasets were created by another third party, the Large-Scale Artificial Intelligence Open Network. *Id.* ¶¶ 138, 144.



ability to screen out or identify” plaintiffs’ infringed works); *cf. Napster*, 239 F.3d at 1027 (defendant had “the ability to use its search function to identify infringing” materials). Plaintiffs therefore fail to plausibly allege that Alphabet had the practical ability to police Google’s alleged direct infringement. Accordingly, Plaintiffs’ claims against Alphabet must be dismissed.

## 2. Limitations on Parent-Subsidiary Liability

Plaintiffs also argue that Alphabet is vicariously liable by virtue of its “*inaction* despite [the] control authority” that it possesses as Google’s parent company. Opp. at 17. In other words, Plaintiffs argue that Alphabet should be held liable not for its own misconduct, but for its mere failure to stop its subsidiary’s misconduct. This expansive view of copyright infringement liability is irreconcilable with the bedrock principle of corporate law “that a parent corporation (so-called because of control through ownership of another corporation’s stock) is not liable for the acts of its subsidiaries.” *United States v. Bestfoods*, 524 U.S. 51, 61 (1998). If adopted, Plaintiffs’ theory risks creating automatic vicarious liability “solely because of the parent-subsidiary relationship.” *Banff Ltd. v. Limited, Inc.*, 869 F. Supp. 1103, 1107 (S.D.N.Y. 1994); *see also Dauman v. Hallmark Card, Inc.*, No. 96 Civ. 3608 (JFK), 1998 WL 54633, \*7 (S.D.N.Y. Feb. 9, 1998).

The Court finds no basis in the Copyright Act or case law to hold a parent company vicariously liable solely due to the parent-subsidiary relationship. Nothing in the Copyright Act suggests that Congress sought to expand liability in copyright cases beyond the normal bounds of corporate law. *Cf. Bestfoods*, 524 U.S. at 61 (holding that “congressional silence” against the “venerable common-law backdrop” of corporate liability counsels against an expansive interpretation of statutory liability). Indeed, the Copyright Act itself “does not expressly impose liability on anyone other than direct infringers[.]” *Fonovisa*, 76 F.3d at 261; *see also Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 435 (1984). Rather, vicarious liability for copyright infringement has developed in the case law as an outgrowth of “the agency principles of respondeat superior.” *Fonovisa*, 76 F.3d at 261-62; *see also Napster*, 239 F.3d at 1022. Therefore, the Court holds that liability for vicarious copyright infringement is subject to general limitations on parent-subsidiary liability.

Relevant here, a parent company may not be held vicariously liable for direct infringement by its subsidiary solely by virtue of the ordinary control that any parent company may exercise over its subsidiary. *See Bestfoods*, 524 U.S. at 61; *see also Katzir’s Floor & Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1149 (9th Cir. 2004) (“The mere fact of sole ownership and control does not eviscerate the separate corporate identity that is the foundation of corporate law.”).<sup>7</sup> The ordinary control that a parent company may exercise over its subsidiary includes electing the subsidiary’s directors, making its by-laws, and establishing the subsidiary’s general policies and procedures. *Bestfoods*, 524 U.S. at 61-62, 72; *Ranza*, 793 F.3d at 1073-74.

Here, Plaintiffs’ allegations do not establish that Alphabet exercised greater control over Google than any parent company may exercise over its subsidiary. Plaintiffs’ allegations fall into two categories: (1) facts regarding the corporate relationship between Alphabet and Google, and (2) facts suggesting that Alphabet exercised “strategic oversight” regarding AI development generally. These allegations do not plausibly allege that Alphabet is vicariously liable for Google’s alleged infringement by training its AI models using datasets that contained Plaintiffs’ works.

With respect to the first category of allegations – Alphabet’s relationship to Google – Plaintiffs fail to allege any facts that support parent company liability. Plaintiffs allege that Alphabet and Google have “intertwined executive leadership.” Compl. ¶ 110. Specifically, “Sundar Pichai serves as both CEO of Alphabet and CEO of Google LLC,” *id.* ¶ 107, and the two companies share “executive officers, including the Chief Financial Officer and Chief Investment Officer,” *id.* ¶ 184. But “it is entirely appropriate for directors of a parent corporation to serve as

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<sup>7</sup> Of course, a parent company may be directly liable under an “alter ego” theory when the subsidiary is a mere instrumentality of the parent company, rather than a separate corporate personality. *Ranza v. Nike*, 793 F.3d 1059, 1073-74 (9th Cir. 2015). Alter ego liability applies where the parent company exercises “pervasive control” and “dictates every facet of the subsidiary’s business – from broad policy decisions to routine matters of day-to-day operation.” *Id.* (quotation omitted). A parent company also may be directly liable when “the alleged wrong can seemingly be traced to the parent through the conduit of its own personnel and management” and “the parent is directly a participant in the wrong complained of.” *Bestfoods*, 524 U.S. at 64 (quotation omitted). Plaintiffs do not expressly invoke or plausibly allege facts to support either theory. Instead, Plaintiffs allege an ordinary parent-subsidiary relationship, and they fail to allege that Alphabet had any direct or indirect involvement in Google’s training of generative AI models.

1 directors of its subsidiary, and that fact alone may not serve to expose the parent corporation to  
 2 liability for its subsidiary's acts." *Bestfoods*, 524 U.S. at 69 (quoting *Am. Protein Corp. v. AB*  
 3 *Volvo*, 844 F.2d 56, 57 (2d Cir. 1988)). Plaintiffs also allege that Alphabet and Google "share[]  
 4 financial incentives," *id.* ¶ 110, but that, too, is true of any parent company and its wholly owned  
 5 subsidiary, *see Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 777 (1984) ("A parent and  
 6 its wholly owned subsidiary have a complete unity of interest."). These allegations are insufficient  
 7 as a matter of law to establish vicarious liability as to Alphabet.

8 With respect to the second category of allegations, Plaintiffs allege that Alphabet  
 9 "exercises direct oversight and control over Google's AI business and development activities."  
 10 Compl. ¶ 104. But, to be clear, Plaintiffs do not allege that Alphabet had any direct or indirect  
 11 role in Google's training of the generative AI models at issue in this case. *Cf. id.* ¶¶ 17-103, 113-  
 12 162 (alleging that Google selected the relevant datasets and trained the generative AI models).  
 13 Instead, Plaintiffs allege that Alphabet was responsible for "strategic" direction and oversight on  
 14 AI issues generally. *Id.* ¶¶ 106, 108, 184, 188-189, 191. Plaintiffs allege that Alphabet  
 15 "orchestrat[ed] the merger" of Google Brain with DeepMind. *Id.* ¶¶ 107-108, 184. Plaintiffs also  
 16 allege that Alphabet has shaped "its subsidiaries' operations to accelerate AI research and  
 17 development" and to integrate AI into core Google products. Compl. ¶¶ 106-108, 184. These  
 18 allegations describe the type of high-level control that a parent company commonly exerts over a  
 19 subsidiary's corporate structure and general policies.<sup>8</sup> *See Bestfoods*, 524 U.S. at 72.  
 20 Accordingly, these allegations are also insufficient for vicarious copyright infringement.

21 Because Plaintiffs allege nothing more than a typical parent-subsidary relationship, the  
 22 Court does not take up Defendants' request to apply the standard set forth in *Frank Music Corp. v.*

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24 <sup>8</sup> Plaintiffs also improperly attribute control over Google's "strategic operations" to Alphabet  
 25 based on actions by Mr. Pichai, who leads both companies. *See, e.g.,* Compl. ¶¶ 106-108, 110,  
 26 184. Generally, when a corporate officer holds positions at both a parent company and a  
 27 subsidiary, courts presume that the officer acts on behalf of the subsidiary when acting *for* the  
 28 subsidiary. *Bestfoods*, 524 U.S. at 69-70. In light of this presumption, Plaintiffs needed to allege  
 "facts tending to exclude the possibility" that Pichai and other joint officers were acting on  
 Google's behalf. *In re Century Aluminum*, 729 F.3d at 1108. Absent these allegations, the Court  
 cannot infer that Alphabet is liable merely because Pichai and other dual officers allegedly made  
 policy decisions for Google. *See Bestfoods*, 524 U.S. at 69-70.

1 *Metro-Goldwyn-Mayer, Inc.*, 772 F.2d 505 (9th Cir. 1985) (“*Frank I*”). In that case, the MGM  
 2 Grand Hotel was found liable for direct copyright infringement of five songs that it used in a  
 3 musical revue. *Id.* at 509. In a section of the opinion titled “Liability for Joint Infringers,” the  
 4 Ninth Circuit held that the parent company, MGM Inc., may also be held liable if there was a  
 5 “substantial and continuing connection” between the two companies “with respect to the  
 6 infringing acts.” *Id.* at 519-20; *Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc.*, 886 F.2d 1545,  
 7 1553-55 (9th Cir. 1989) (“*Frank II*”) (noting that MGM Inc. knew whether the works could be  
 8 used, provided clearance to use the infringing works, and “actively consulted with” and “assisted”  
 9 the subsidiary). However, *Frank* did not expressly involve a claim of vicarious infringement, but  
 10 rather an unspecified theory of liability for “joint infringers.” *Frank I*, 772 F.2d at 519-20.  
 11 Because MGM Inc. was actively involved in the infringing conduct itself, *Frank* is closer to a  
 12 contributory infringement case. *See Frank II*, 886 F.2d at 1553-55; *see also Visa*, 494 F.3d at 795  
 13 (discussing requirements for contributory infringement liability). The Nimmer treatise – relied  
 14 upon by the Ninth Circuit in articulating the standard in *Frank I* – cautions courts not to blur these  
 15 distinct theories of indirect liability. 3 Melville B. Nimmer & David Nimmer, *Nimmer on*  
 16 *Copyright* § 12.04[A] (2025). Heeding that guidance, the Court does not resolve whether the  
 17 *Frank* standard applies here.<sup>9</sup>

18 \*\*\*

19 In sum, the Court holds that Plaintiffs fail to plausibly allege that Alphabet had the  
 20 practical ability to stop or limit Google’s alleged direct infringement. Therefore, Plaintiffs fail to  
 21 state a claim against Alphabet for vicarious liability. The Court also holds that a parent company  
 22 cannot be held vicariously liable merely based on the ordinary control that a parent company  
 23 exercises over its subsidiary. Here, Plaintiffs fail to allege more than a typical parent-subsidiary  
 24 relationship. Accordingly, Plaintiffs’ claims for vicarious infringement are dismissed.

25  
 26  
 27 <sup>9</sup> To the extent that the *Frank* standard applies, Plaintiffs have not met it. Plaintiffs fail to allege  
 28 any involvement by Alphabet in Google’s training of the generative AI models at issue, let alone a  
 substantial and continuing connection between Alphabet and Google with respect to the alleged  
 infringement.

**D. Dismissal is Without Leave to Amend**

The Court finds that Plaintiffs' direct infringement claims as to certain models, and Plaintiffs' vicarious infringement claims, should be dismissed with prejudice and without leave to amend. In making this determination, the Court considers factors such as "undue delay, bad faith or dilatory motive on the part of the [Plaintiffs], repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Court also considers "the number of times the plaintiff has already been allowed to amend." *Schwartz v. Miller*, --- F.4th ---, No. 23-1343, 2025 WL 2473008, at \*9 (9th Cir. Aug. 28, 2025). Although the Court does not find bad faith or dilatory motive, all other factors weigh in favor of denying leave to amend.

First, Plaintiffs have failed to cure pleading deficiencies despite several previous opportunities to amend. Before the cases were reassigned to this Court, Judge Martínez-Olguín dismissed the *Leovy* complaint and granted leave to amend to cure pleading deficiencies. ECF No. 46. After the cases were consolidated, this Court granted leave to amend once again – over Defendants' objections. ECF No. 77. In doing so, the Court required the parties to engage in a substantial, multi-stage meet and confer process so that Plaintiffs could address Defendants' prior motion-to-dismiss arguments in crafting their consolidated amended complaint. Despite these opportunities to amend, Plaintiffs failed to cure pleading deficiencies for the reasons discussed above.

Second, the Court finds that further leave to amend would be futile in light of the previous opportunities to amend and Plaintiffs' failure to cure pleading deficiencies. *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009), *as amended* (Feb. 10, 2009) (holding that failure to correct pleading deficiencies after dismissal is a "strong indication" that further amendment would be futile); *see also Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1133 (9th Cir. 2013) ("A district court's discretion to deny leave to amend is 'particularly broad' where the plaintiff has previously amended." (quoting *Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996))).

Moreover, Plaintiffs failed to identify any facts that could save the dismissed claims, which further demonstrates that amendment would be futile. *See* Opp. at 24 (requesting leave to amend without identifying any potential amendments). In advance of the motion hearing, the Court sent a tentative ruling to the parties, indicating that it was inclined to deny leave to amend. The Court invited Plaintiffs to explain why leave to amend should be granted. At the hearing, Plaintiffs first argued that paragraphs 115 to 119 of the complaint allege that Google “employs consistent training methodologies across its models.” 4/23/25 Hr’g Tr. 21:11-13, ECF No. 132. But these allegations only refer to Gemini and Bard – they do not state that any other model was trained on the same or similar datasets that include copyrighted works. Plaintiffs also cited paragraph 128, but that allegation states only that “Google’s Infiniset (which encompassed C4) was a foundational dataset used to train Bard, Gemini’s predecessor.” Compl. ¶ 128. Again, this allegation does not permit any inference that other generative AI models were trained on copyrighted works.

Finally, as a last resort, Plaintiffs cited their conclusory allegations that Defendants “engaged in a knowing and active fraudulent concealment” that prevented Plaintiffs from knowing which models were trained on which datasets. *Id.* ¶¶ 158-162. However, Plaintiffs do not allege any acts of fraudulent concealment, and the complaint is replete with citations to academic articles, white papers, and other public sources in which Google explains in detail how it trained various generative AI models. Plaintiffs’ conclusory allegations are insufficient to permit wide-ranging claims of copyright infringement.<sup>10</sup> It bears repeating that Plaintiffs’ infringement claims as to many of the models are not supported by a *single* factual allegation. Accordingly, given the complete lack of supporting factual allegations, Plaintiffs’ direct copyright infringement claims are dismissed with prejudice as to the following models: Codey, Chirp, Veo, MedLM, LearnLM, SecLM, Gemma, CodeGemma, RecurrentGemma, PaliGemma.

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<sup>10</sup> Plaintiffs cite *Soo Park v. Thompson* for the proposition that a complaint is entitled to leniency “where the facts are peculiarly within the possession and control of the defendant.” 851 F.3d 910, 928 (9th Cir. 2017). But *Soo Park* held that, in such circumstances, a plaintiff may plead facts on “information and belief.” *Id.* It did not hold that a claim may be sustained absent any supporting factual allegations. Here, Plaintiffs do not allege infringement as to Codey, Chirp, or any of the other extraneous models based on information and belief. *Cf.* Compl. ¶¶ 128-131 (alleging, based on “information and belief,” that Google trained Gemini using copyrighted works). Accordingly, the Court cannot infer that any factual basis exists for these claims. *See* Fed. R. Civ. P. 11(b)(3).



1 Finally, the Court finds that granting further leave to amend would unduly prejudice  
2 Defendants. This case has been pending for more than two years. The parties have engaged in  
3 extensive motion practice at the pleading stage – including three motions to dismiss in the *Leovy*  
4 action, one motion to dismiss in the *Zhang* action, and the present motion to dismiss. Substantial  
5 judicial and party resources have been spent on discovery. *See* Order Amending Case Schedule,  
6 ECF No. 197. The pleadings must be settled *now* to focus the parties’ efforts in this massive and  
7 complex case. Permitting Plaintiffs to amend once more would be unduly burdensome on  
8 Defendants and would further delay resolution of this important matter.

9 **V. CONCLUSION**

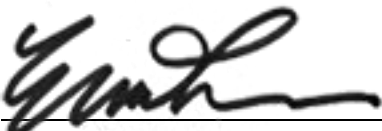
10 For the foregoing reasons, Plaintiffs’ direct infringement claims relating to the following  
11 generative AI models are DISMISSED with prejudice: Codey, Chirp, Veo, MedLM, LearnLM,  
12 SecLM, Gemma, CodeGemma, RecurrentGemma, and PaliGemma. Compl. ¶ 105. Plaintiffs’  
13 claims for vicarious copyright infringement against Alphabet are also DISMISSED with prejudice.

14 Within 14 days of this Order, Plaintiffs shall file a second amended consolidated complaint  
15 to amend the class definition, and to make any necessary and related conforming edits, consistent  
16 with the Court’s Order on Google’s motion to strike class allegations. *See* ECF No. 128.  
17 Plaintiffs may not add any new claims, parties, or other allegations in the amended complaint.  
18 Plaintiffs shall also file a redline comparing the new complaint to the previously-filed one.

19 Within 21 days after Plaintiffs file the second amended consolidated complaint, Google  
20 shall file its answer.

21 **IT IS SO ORDERED.**

22 Dated: September 11, 2025

23  
24 

25 Eumi K. Lee  
26 United States District Judge  
27  
28